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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,836	08/09/2006	Alain Behar	Q94335	5015
23373 7590 02/19/2009 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			EXAMINER HAGEDORN, MICHAEL E	
			ART UNIT 3754	PAPER NUMBER
			MAIL DATE 02/19/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/574,836

**Applicant(s)**

BEHAR ET AL.

**Examiner**

Michael Hagedorn

**Art Unit**

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 - 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 - 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☒ Certified copies of the priority documents have been received in Application No. 10/574836.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-893)  
Paper No(s)/Mail Date 06 April 2006

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
3. Claims 1 – 12, 14, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Antrag auf Nichtnennung (Foreign Patent DE 40 020 817 A1) in view of Spiess et al. (US Patent 2,856,104).

Antrag auf Nichtnennung teaches a fluid dispenser head on a dispenser member (3), a connection sleeve (17) for engaging the actuator rod (3), an inlet duct (23), dispenser end piece (20) defining an end piece channel (see figure 1), a connection channel (21) that is connected to the inlet duct (23), dispenser orifice (12), a bearing surface (16) to drive the actuator rod (3), a base skirt (5), an inner core (18) inside the

casing (9). The inner core (18) forms the connection sleeve (17) and part of the connection channel (21). The spout (18) forms an axial groove cooperating with the dispenser end piece and wherein the spout (18) terminates in a position set back from the dispenser orifice (12), the top portion of the channel (19) formed solely by the casing (9). The core (18) forms a bearing plate. Wherein the dispenser end piece is a flat spatula shape, said bearing surface (16) forming an angle in the range 40 to 90 degrees.

Antrag auf Nichtnennung fails to teach wherein a flexible casing that forms a bearing wall defining the bearing surface and wherein the core forms a bearing plate into which a duct opens out axially and plate includes a transverse groove.

Spiess et al. does teach wherein a flexible casing (11) that forms a bearing wall (27) defining the bearing surface and wherein the core (17) forms a bearing plate into which a duct (22) opens out axially and plate includes a transverse groove.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have a flexible casing defining the bearing surface because this will allow the user to easily remove the casing so that the core can be cleaned and be fixed is any maintenance issues. Furthermore, having a transverse groove will allow the fluid being dispensed to have more velocity when exiting improving performance.

4. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Antrag auf Nichtnennung (Foreign Patent DE 40 020 817 A1) in view of Spiess et al. (US Patent 2,856,104), as applied to claim 1 above, and further in view of Goodspeed (US Patent 2,908,479).

Antrag auf Nichtnennung and Spiess has been discussed above but doesn't disclose wherein the core forms a collar that is engaged in a base skirt.

Goodspeed does disclose in which the core (2) forms a collar (2g) that is engaged in a base skirt (7a) by the casing (7)

Therefore, this would have been obvious to one of ordinary skill in the art at the time of the invention because it would provide for a better seal, thus improving performance.

5. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Antrag auf Nichtnennung (Foreign Patent DE 40 020 817 A1) and Spiess et al. (US Patent 2,856,104) as applied to claim 1 above, in further view of Spiess et al. (US Patent 2,670,871).

Antrag auf Nichtnennung has been discussed above but doesn't teach a self-sealing nozzle. Spiess does teach however, a self-sealing nozzle (11) (column 1, lines 1 – 6)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have a self-sealing nozzle because this would prevent accidental leakage when the dispenser is not in use.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents (3,361,301); (4,860,933); (D537,714); (4,969,584); (3,096,002); (5,915,599); (4,901,891); (5,765,601) (5,340,031).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Hagedorn whose telephone number is (571)270-5705. The examiner can normally be reached on 7am - 5pm; Mon thru Fri except federal holidays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571)270-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. H./  
Examiner, Art Unit 3754

/Kevin P. Shaver/  
Supervisory Patent Examiner, Art Unit 3754